

## UNITED STATES COURT OF APPEALS

APR 22 2008

## FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BOYD ED GRAVES,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants - Appellees.

No. 07-56782

D.C. No. CV-007-00453-LAB  
Southern District of California,  
San Diego

ORDER

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

A review of the record, the opening brief and the response to the court's order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Federal Rule of Civil Procedure 4(c)(1)'s requirement that a summons be served with a copy of the complaint has not been met. *See Fed. R. Civ. P. 4(c)(1)*. Nor did appellant serve a separate copy of the summons and complaint on the United States Attorney for the Southern District of California, as required by Federal Rule of Civil Procedure 4(i)(1). *See Fed. R. Civ. P. 4(i)(1)*. Moreover, the district court did not err in rejecting appellant's "re-filed" complaint because it was procedurally improper for

appellant to re-file a complaint in that case after the had been dismissed, even though the case was dismissed without prejudice.

Accordingly, we summarily affirm the district court's judgment.

**AFFIRMED.**